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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-1846

THE STATE OF CALIFORNIA, Petitioner,

v.

RANDALL JAMES PRYSOCK, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE FIFTH APPELLATE DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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COPY

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-

THE STATE OF CALIFORNIA,

Petitioner,

vs.

RANDALL JAMES PRYSOCK,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent, RANDALL JAMES PRYSOCK, by and through his counsel, asks leave to file the attached Respondent's Brief in Opposition to the Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 53.

The affidavit of respondent in support of this motion is attached hereto.

QUIN DENVIR
State Public Defender

Attorney for Respondent

COPY

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner

v.

RANDALL JAMES PRYSOCK, Respondent

DECLARATION

I, RANDALL JAMES PRYSOCK, being first duly sworn according to law, declare and say, in support of my motion for leave to proceed without being required to prepay costs or fees:

1. I am the respondent in the above-entitled case.

2. I was permitted to proceed in forma pauperis in the trial court and in the California Court of Appeal. Because of my poverty I am unable to pay the costs of said case.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said case.

5. The nature of said case is briefly stated as follows:

I was convicted of murder with special circumstances and several other charges in the Tulare County, California Superior Court. All but one of these convictions were reversed by the Court of Appeal of California for the Fifth Appellate District. The present proceeding was commenced by the People of the State of California in a Petition for a Writ of Certiorari to the Court of Appeal of California for the Fifth Appellate District.

Dated: May 7, 1981.

Randall Prysock 5-7-81

RANDALL JAMES PRYSOCK

COPY

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FILED
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CLERK

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IN THE SUPREME COURT OF THE UNITED STATES

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STATE OF CALIFORNIA,	)
Petitioner,	)
v.	)
RANDALL JAMES PRYSOCK,	)
Respondent.	)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE FIFTH APPELLATE DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION TO
THE PETITION FOR WRIT OF CERTIORARI

Respondent, Randall James Prysock, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the California Court of Appeal's decision in this case. In its unanimous opinion filed December 5, 1980, the California Court of Appeal reversed respondent's conviction as to five of the six counts. The grounds were that respondent was not adequately advised of his rights under Miranda v. Arizona (1966) 384 U.S. 436, specifically, that "he was not given an adequate warning that he could have the services of a free attorney before and during the interrogation."[1/]

In so doing, the Court of Appeal found it unnecessary to reach additional claims raised by respondent. First, respondent had contended that, assuming arguendo that the advisement of

1. Petition for Writ of Certiorari (hereinafter "Pet."), Appendix A (hereinafter "Opin."), p. 9.

Miranda rights was facially sufficient, the prosecution had failed to carry its "heavy burden" (Miranda, 384 U.S. at 475) of showing that respondent had "knowingly and intelligently" (Miranda, 384 U.S. at 475) waived those rights, since there was uncontradicted testimony by Mrs. Prysock, Mr. Prysock and Randall that they did not understand or realize that, if they could not afford a lawyer, Randall had the right to have one provided by the court at no cost prior to any questioning.[2/] Second, respondent had argued that there was insufficient evidence under Jackson v. Virginia (1979) 443 U.S. 307 to support the finding of the truth of the special circumstances allegations, which finding was the basis for respondent's sentence of life imprisonment without the possibility of parole.[3/]

On April 2, 1981, Justice Rehnquist issued a temporary stay of the Court of Appeal's order, and on April 24, 1981, he continued the stay pending the Court's disposition of the petition for writ of certiorari.

STATEMENT OF FACTS

Petitioner's recounting of the facts is generally accurate, with the following additional points:

1. Petitioner's description of the murder (Pet., p. 6) fails to differentiate between the respective roles of respondent and his codefendant, Mark Danley.[4/] In this regard, the Court

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2. This uncontroverted evidence belies petitioner's claim that "[t]here is no reason to suppose appellant believed it [the warning regarding a free attorney] referred to the right to an attorney at some later time." (Pet., p. 17.)

3. Thus, contrary to petitioner's statement that "no question exists as to respondent's culpability of the crimes" (Pet., p. 23), there was considerable dispute as to what culpability there was.

4. Danley was tried separately after respondent's conviction. In spite of his attorney's advice not to testify, because "he wasn't gaining anything by it, [h]e was only putting his life in danger," respondent testified for the prosecution at Danley's trial. Danley was convicted and sentenced to life imprisonment without parole, the same sentence received by reaponsent.'

of Appeal (Opin., p. 7) found the evidence to show that,

> "When the victim announced that she was going to call the police, defendant hit her two or three times with a wooden dowel which he found near where he was standing in the livingroom. Danley then hit her with a metal fireplace poker, stabbed her in the back eight times with an ice pick to a consistent depth of 1" to 1'1/4" and eventually strangled her to death with a telephone cord."

Indeed, the prosecuting attorney himself, noting that a polygraph test had confirmed the fact that the murderous assault had been committed by Danley, stated that Randall "did not know who the Erickson family was, or the reasons why they were going over to the house on the day of the murder," that "Mr. Randall Prysock was the follower in almost every sense of the word," and that "if Mr. Prysock hadn't of been present . . . the murder still would have occurred."

2. Petitioner (Pet., p. 7) states that upon his arrival at the sheriff's substation "respondent Prysock was advised of his Miranda rights by Sergeant Byrd." (See also Pet., p. 16.) As the Court of Appeal opinion points out (Opin., p. 8), however, "[t]he record does not reveal the exact content of the advisement." Accordingly, at no time has petitioner claimed that the requirements of Miranda were fulfilled at this initial encounter between respondent and Sergeant Byrd.

3. Petiitoner (Pet., p. 9) summarizes part of an off-tape conversation between Sergeant Byrd and the Prysocks.[5/] In addition to the part summarized by petitioner, which did not involve the availability of a court-appointed lawyer, there was the following testimony regarding that subject:

> "Q [Defense counsel] Did you ever mention to Mr. or Mrs. Prysock or Randy how much it would cost them to hire an attorney?
>
> "A I think Mr. Prysock made some remarks to me that he didn't have money to hire an attorney. And I told him that the price of an attorney

---

5. The actual testimony regarding this conversation is quoted in the Court of Appeal opinion at pp. 11-12.

that Randy qualified for the Public Defender's Office.

> "And that the price of the attorney that this would be the proper people to contact, and that they had some excellent attorneys, I believe is the statement I made to him." (Opin., pp. 11-12.)

Putting aside the inherent ambiguity of these remarks, telling the Prysocks at 8:30 at night (RT 227, 233-34) to contact the Public Defender's office does not make clear that Randall had a right to a court-appointed lawyer to be present at the jail prior to any questioning; if anything, it suggests that there was no right to the immediate presence of a court-appointed lawyer.

Perhaps the best appraisal of the effect of the off-tape conversation is the Court of Appeal's finding (Opin., p. 15) that "the matter was obfuscated, rather than clarified, by the off-the-record discussion."

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

Petitioner asks that this Court exercise its jurisdiction under 28 U.S.C. section 1257(3) on the basis that the present case presents an important federal question. However, it is well settled that where the state court decision is based on a state law ground which is independently sufficient to uphold the decision, a grant of certiorari is unwarranted, regardless of any federal question presented. (See, e.g., Jankovich v. Toll Road Comm'n, 379 U.S. 487, 489 (1964); Fox Film Corp. v. Muller, 296 U.S. 207, 210 (1935). The rationale for refusing to review a decision based on an independent state ground, even when there is serious question as to the correctness of an alternate ruling on a federal question, was set forth in Herb v. Pitcaron, 324 U.S. 117, 125-26(1945):

> "Our only power over the state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments,

> not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of Federal laws, our review could amount to nothing more than an advisory opinion."

We will show below that, regardless of any federal question presented, the decision of the Court of Appeal herein was based upon its binding construction of California law and that, since there is an adequate and independent state ground for the decision, the petition for writ of certiorari should be denied.

First, the California Supreme Court has made clear that the doctrine of Miranda v. Arizona, supra, has been incorporated as "an intrinsic part of the law of this state." (People v. Pettingill (1978) 21 Cal.3d 231, 237.) Moreover, the Miranda doctrine, as incorporated in California state law, is not limited to this Court's holdings regarding Miranda as federal law. Compare People v. Pettingill, supra, with Michigan v. Mosley (1975) 423 U.S. 96; compare People v. Disbrow (1976) 16 Cal.3d 101 with Harris v. New York (1971) 401 U.S. 222.

Both "the relevant language of Miranda" and "the holdings of its 'California progeny' which have applied that language" are firmly grounded in state law. See People v. Pettingill, supra, 21 Cal.3d at 237. Significantly, the Court of Appeal based its decision herein primarily on two of these California progeny of Miranda: People v. Bolinski (1968) 260 Cal.App.2d 705 and People v. Stewart (1968) 267 Cal.App.2d 256. See Opin., pp. 15-18.

Moreover, the California Supreme Court decisions incorporating Miranda into state law have repeatedly lauded that decision for creating "a single, uncomplicated universally applicable test" (People v. Disbrow, supra, 16 Cal.3d at 111) which promoted "stability and predictability of the law on this important topic." (People v. Pettingill, supra, 21 Cal.3d at 250.) It is precisely this virtue of Miranda which is at the

core of decision below, which only implements Miranda according to its terms.

In short, it is clear that the decision of the Court of Appeal herein was based on an independent and adequate state ground. Thus, regardless of any federal question presented, the petition for a writ of certiorari should be denied.

Furthermore, petitioner has advanced no substantial reason for this Court to grant certiorari review of the decision herein. First, the decision turns solely on an issue regarding the application of Miranda v. Arizona, supra, and, as petitioner conceded in its application for stay of execution and enforcement of judgment (p. 5), "the issue of proper application of Miranda is not new or novel." Indeed, Miranda issues have specifically been noted to be unlikely candidates for certiorari:

> "This Court is tendered many opportunities by unsuccessful prosecutors and unsuccessful defendants to review rulings predicted on Miranda and related cases, and, as with many issues that recur in petitions before this Court, we decline most such tenders." (Fare v. Michael C. (1978) 439 U.S. 1310, 1314; Rehnquist, J., in chambers.)

Second, the Court of Appeal's decision herein presents no novel legal question or departure from settled law, even in the Miranda area. Rather, the Miranda decision itself makes clear that one of the mandatory warnings which msut be given a suspect is that "if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires" (384 U.S. at 479; emphasis added.)[6/] The Court explained the importance of this warning:

> "The warning of a right to counsel would be hollow if not couched in terms that would convey to the

---

6. See also 384 U.S. at 474. In Rhode Island v. Innis (1980) 446 U.S. 291, 297, the Court recently reiterated the "now familiar Miranda warnings--namely, that the defendant be informed 'that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.'" (Emphasis added.)

> indigent--the person most often subjected to interrogation--the knowledge that he too has a right to have counsel present." (384 U.S. at 473; emphasis added.)

Miranda similarly makes clear that there must be an "effective and express explanation" of the rights (384 U.S. at 473); the suspect "must be adequately and effectively apprised of his rights" (384 U.S. at 476); and the advisement of rights must be "in clear and unequivocal terms" (384 U.S. at 467-468). The Court of Appeal decision below merely gives effect to this express language of the Miranda decision.

Petitioner's claim that this case involves "substantial questions of a recurring nature" (Pet., p. 11) is unfounded. Shortly after the Miranda decision came down, when the full scope of the decision may not have been universally understood, the California Court of Appeal decided two cases laying down the rule that a suspect must be expressly advised not only of his right to a court-appointed attorney but also that he has a right to see that attorney prior to any questioning. (See People v. Bolinski (1968) 260 Cal.App.2d 705; People v. Stewart (1968) 267 Cal.App.2d 366.) Those early decisions put the matter to rest, and, as the Court of Appeal pointed out (Opin., p. 15), "there are not many recent cases on the subject." The police were early on provided a clear-cut rule; they have had no difficulty in complying with it, usually by using a standard Miranda warnings card. See, e.g., People v. Pettingill, supra, 21 Cal.3d at 235 n. 2; People v. Owens (1980) 106 Cal.App.3d 23, 26. In California at least, there is no recurring problem warranting certiorari revew.

Moreover, the decision below is not one which attempts "to extend Miranda or to extend in any way its strictures on law enforcement agencies." (Fare v. Michael C., supra, 439 U.S. at 1314.) Rather, it only implements "the express terms

and logic of the original opinion" (Id., 439 U.S. at 1315), thus preserving the "core virtue of Miranda." (Id., 439 U.S. at 1314.) See also Harryman v. Estelle (5th Cir. 1980) 616 F.2d 870, 873-74 (en banc).

It must be remembered that the purpose of Miranda was to establish "prophylactic rules" (North Carolina v. Butler (1979) 441 U.S. 369, 374) "to vest a suspect in custody with an added measure of protection against coercive police practices" (Rhode Island v. Innis, supra, 446 U.S. at 301). It is true that "[w]e cannot, in the nature of things, always lay down 'bright line' rules. . . ." Rosales-Lopez v. United States (1981) ___U.S. ___ (Rehnquist, J., conc). For example, on the question of what constitutes a waiver of Miranda rights, the Court has been forced to resort to a "totality of the circumstances" approach.[7] See, e.g., North Carolina v. Butler, supra; Fare v. Michael C. (1979) 442 U.S. 707, 724-25. On the other hand, there are areas which lend themselves to clear-cut rules, and the question of what constitutes an adequate advisement of rights under Miranda is one. Miranda itself set forth the language to be used, and it is only necessary, as the Court of Appeal did here, to strictly enforce that decision according to its terms.

A rule of this nature has several benefits. First, it increases the likelihood that the suspect in police custody will, in fact, understand the crucial point that "he is entitled to a government-furnished counsel here and now," not "somewhere down the line." (Lathers v. United States, (5th Cir. 1968) 296 F.2d 524, 535.) Anything less than required here will only increase the disappointingly large percentage of suspects who do not at

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7. Petitioner would have the Court fall back to a totality of the circumstances approach to the content of the Miranda warnings themselves. (Pet., p. 15.)

present comprehend their rights under Miranda. See Grisso, Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis, 68 Cal.L.Rev. 1134 (1980).[8] Second, such a rule has "the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible." (Fare v. Michael C., supra, 442 U.S. at 718.) In short, the rule applied herein engenders a "gain in specificity, which benefits the accused and the State alike." (Fare v. Michael C., supra, 442 U.S. at 718.)

Moreover, the decision below is not at odds with the federal cases quoted and cited by petitioner. (Pet., pp. 13-15, 18-20.) Preliminarily, it should be noted that in four of the cases cited, the advisement and questioning took place before the Court issued its opinion in Miranda v. Arizona on June 13, 1966, and Miranda was applicable only because the trial began after Miranda had been decided. See Johnson v. New Jersey (1966) 384 U.S. 719, 720.[9] Moreover, another case, Tucker v. United States

8. Grisso's empirical study showed that 55.3% of juveniles and 23.1% of adults tested did not adequately understand at least one of the four Miranda warnings. (Id., at 1153-54.) Significantly, "[t]he most frequently misunderstood Miranda warning for both samples was the statement that a suspect has the right to consult an attorney before interrogation and to have an attorney present during interrogation." (Id., at 1154.)

9. The interrogation in Coyote v. United States (10th Cir. 1967) 380 F.2d 305 occurred on April 20, 1966 (380 F.2d at 307). The interrogation in United States v. Vanterpool (2nd Cir. 1968) 394 F.2d 697 took place on March 1, 1966. (394 F.2d at 699; Waterman, J., dis.) The interrogation in Camacho v. United States (9th Cir. 1969) 407 F.2d 39 occurred on October 15, 1965 (407 F.2d at 40). Although the opinion in Evans v. Swenson (8th Cir. 1972) 455 F.2d 291 places the questioning in that case in 1968, it apparently took place on May 15, 1966 (455 F.2d at 293-94), since the defendant was tried in October 1966 (Id. at 294) and sentenced on January 20, 1967 (Id. at 292.)

(8th Cir. 1967) 375 F.2d 363, is readily distinguished from the present case because there the issues were whether the defendant had unequivocally articulated a waiver of his right against self-incrimination and whether a full readvisement of Miranda rights was necessary before each and every interrogation (375 F.2d at 366)[10], the defendant having "tacitly" conceded on appeal (Id. at 365) the issue in the present case, whether the warning given at the outset of the interrogation complied with Miranda.[11]

Most significantly, in all the cited cases not only was the language of advisement of rights different than in the instant case, but also "the reference to the right to appointed counsel immediately followed the reference to the right to consult with an attorney before and during questioning" (United States v. Noa (9th Cir. 1971) 443 F.2d 144; emphasis added). It was this temporal continguity which led the court to conclude that the advisement "conveyed the substance of a warning of the right to consult with appointed counsel prior to and during questioning."

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10. Similarly, the discussion of the adequacy of the advisement in Camecho v. United States, supra, 407 F.2d at 42 and n. 2 is more dicta, the Court expressly stating that its conclusion in this regard "does not directly affect the result herein." (Id.)

11. Furthermore, in Tucker the court was able to conclude that the defendant had been advised of his Miranda rights "in language which he manifestly understood" (Id. at 369), because there was evidence that on three separate occasions the defendant had explicitly declined the services of counsel. (Id. at 368.) There is no comparable evidence in the instant case. In fact, all the evidence points to the opposite conclusion, i.e., that Randall was not advised in language that he "manifestly understood," since there was uncontradicted testimony by Randall that he did not understand that if he could not afford a lawyer, he had the right to have one provided by the court at no cost prior to questioning. (See RT 319.) This evidence was corroborated by the uncontroverted testimony of Randall's mother and father. (See RT 287, 305.)

Indeed, Randall's testimony in this regard also distinguishes the present case from Coyote v. United States, supra, where the defendant took the stand but did not "subjectively deny that he understood the precautionary warning and advice with respect to the assistance of counsel." (380 F.2d at 308.)

(Id. at 146.) See also Evans v. Swenson, supra, 455 F.2d at 296.In contrast, in the present case, after advising Randall of his right to the presence of a lawyer prior to and during questioning, Sergeant Byrd "diverted the conversation to a discussion of the minor's right to have his parents present" (Opin. p. 14), before mentioning the right to have an attorney appointed at no cost. This "needless excursion," as the Court of Appeal termed it (Id.), rendered it unlikely that Randall would understand that he had a right to the appointed attorney prior to any questioning, absent an express advisement to that effect.

Not only is the result below not inconsistent with the federal precedent cited by petitioner, but it is fully in accord with Lathers v. United States (5th Cir. 1968) 398 F.2d 524. There the Court held that a warning that "if he was unable to hire an attorney the Commissioner or the Court would appoint one for him" was inadequate because

> "The Miranda warning must effectively convey to the accused that he is entitled to a government-furnished counsel here and now. If the wards are subject to the construction that such counsel will be available only in the future, Miranda has not been obeyed." (396 F.2d at 535.)

Judge Goldberg explained that "the offer of counsel must be clarion and firm, not one of mere impressionism" and that with "the burden fall[ing] squarely on the government's shoulders to prove an offer without equivocation or ambivalence," the issue is whether the words are "so clear that they distill all doubt." (Id.)

Finally, the opinion below, which was ordered not to be published in the official reports, has no precedential value. See Rule 977, California Rules of Court (an unpublished opinion may not be cited by a court or party in any other action or proceeding, with very limited exceptions). Thus, rather than a state supreme court decision which will have a

wide effect on state law enforcement efforts (e.g. Fare v. Michael C., supra, 439 U.S. at 1312), this state court of appeal decision will have no effect outside of the particular case and thus is "simply a run of the mine case in which an appellate court [has] reached an opposite conclusion from a trial court in a unitary judicial system." (Sumner v. Mata (1981) ___ U.S. ___, 66 L.Ed.2d 722, 728.) Indeed, the main thrust of the petition is that "the California Court of Appeal has erroneously concluded. . .," that "the California Court of Apepal was in error." (Pet., pp. 11, 23.) Thus, the case is merely one of thousands presented to the Court each year seeking review of the merits of an individual decision, yet "[o]bviously this Court cannot review all decisions of other courts which hold that the prosecution has or has not carried its burden of showing that a defendant waived his 'Miranda' rights." California v. Braeseke (1980) 444 U.S. 1309, 1310 (Rehnquist, J., in chambers).

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CONCLUSION

For the foregoing reasons, respondent urges that the petition for a writ of certiorari herein be denied.

DATED: May 8, 1981.

Respectfully submitted,

QUIN DENVIR
State Public Defender

Attorney for Respondent

UNITED STATES SUPREME COURT

October Term, 1980

No. 80-

THE STATE OF CALIFORNIA,	
Petitioner,	
vs.	
RANDALL JAMES PRYSOCK,	
Respondent.	

CERTIFICATE OF SERVICE BY MAIL

QUIN DENVIR, a member of the Bar of the Supreme Court of the United States, states:

That his business address is 455 Capitol Mall, Suite 335 in the City and County of Sacramento, State of California; that on May 8, 1981 he served a true copy of the attached Respondent's Brief in Opposition to the Petition for Writ of Certiorari, the attached Motion for Leave to Proceed in Forma Pauperis, and the attached Declaration of RANDALL JAMES PRYSOCK, on each of the following, by placing same in envelopes addressed respectively as follows:

RANDALL JAMES PRYSOCK
B-98553
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Vacaville, California 95688

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Said envelopes were then sealed and deposited in the United States mail at Sacramento, California with the postage thereon fully prepaid.

Quin Denvir

QUIN DENVIR